UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Chapter 11
	)	
Empire Die Casting Co., Inc.	)	Case No.
	)	
Debtor.	)	
	)	Judge Marilyn Shea-Stonum
An Ohio Corporation	)	
(Employer Tax I.D. No. 34-0688531)	)	
	)	

AFFIDAVIT OF ROBERT HOPKINS IN SUPPORT OF CHAPTER 11 PETITION AND FIRST DAY MOTIONS

STATE OF OHIO	)	
	)	SS:
COUNTY OF SUMMIT	)	

Now comes Robert Hopkins after having been first duly sworn according to law, and deposes and states under oath as follows:

1. I am the President of Empire Die Casting, Co., Inc. (the "**Debtor**"), the debtor and debtor-in-possession in the above-captioned chapter 11 case. I am familiar with the operations, business affairs, and books and records of the Debtor.

2. I submit this affidavit (the "**Affidavit**") in support of the Debtor's petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), filed concurrently herewith, and other relief, in the form of motions that the Debtor has requested of this Court (the "**First Day Motions**").[1] I believe that the relief sought in each of the First Day

[1] Capitalized terms not otherwise defined herein shall have the meanings given to them in the relevant First Day Motions.

Motions (i) is necessary to enable the Debtor to operate in Chapter 11 with minimum disruption to its operations or loss of value, (ii) constitutes a critical element in achieving a successful reorganization of the Debtor, and (iii) best serves the Debtor's estate and creditors' interests.

3. All of the facts set forth in this Affidavit are based on my personal knowledge upon information supplied to me by others at the Debtor's businesses, upon my review of relevant documents, or my opinion based upon my experience and knowledge of the Debtor's operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

4. This Affidavit describes the business of the Debtor and the circumstances surrounding the commencement of the Debtor's chapter 11 case and sets forth a relevant summary in support of each of the First Day Motions.

PART I

BACKGROUND

A. The Chapter 11 Filing

5. On October 16, 2013 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtor is operating its businesses as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Summary of Capital Structure and Current Business Operations

6. The Debtor is a corporation formed under the laws of the State of Ohio. The Debtor provides precision aluminum and zinc cast parts to a wide variety of customer specifications and is located in Macedonia, Ohio.

7. Richard Rogel ("**Rogel**") is the Chairman and Chief Executive Officer of the Board of the Debtor. Rogel owns 97.7% of the shares of the Debtor. The remaining 2.3% of the shares are held by various individuals and employees of the Debtor.

8. The Debtor's headquarters and sole operating facility is located at 635 East Highland Road, Macedonia, Ohio (the "**Facility**"). The Debtor owns the Facility.

9. The Debtor employs 211 employees: 171 hourly and 40 on salary. Of the 171 hourly employees, 169 are members of the Industrial Maintenance and Vending Machine Service Employees Local Union 416, affiliated with the International Brotherhood of Teamsters (the "**Union**").

10. The Debtor's annual sales for the last fiscal year were approximately $34 million.

C. Summary of Pre-Petition Obligations

Prepetition Obligations

11. Obligations under the Pre-Petition Credit Agreement. As of the Petition Date, the Debtor was party to a certain Amended and Restated Loan and Security Agreement, dated as of January 12, 2011(the "**Pre-Petition Credit Agreement**")[2], among the Debtor, as borrower (the "**Borrower**"), and FirstMerit Bank, N.A., as successor in interest to Citizens Bank association ("**FirstMerit**"), as lender (the "**Pre-Petition Lender**"). Pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Lender provided Debtor with a revolving credit facility (the "**Revolving Facility**") in the aggregate principal amount of up to $4,500,000. As of October 15, 2013, the outstanding unpaid balance under the Revolving Facility was at least $4,948,165.41, which includes an Overadvance (as defined in the Pre-Petition Credit Agreement) of $950,000.

[2] The Pre-Petition Credit Agreement amended and restated that certain Loan and Security Agreement dated as of September 27, 2007, among the Debtor as borrower and Citizens Bank as lender.

Also pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Lender provided Debtor with a term loan (the "**Term Facility**") on January 12, 2011 in the amount of $447,499.87. As of October 15, 2013, the outstanding unpaid balance under the Term Facility was at least $139,843.84. Also pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Lender provided Debtor with a real estate term loan (the **"Real Estate Term Facility**") on January 12, 2011 in the amount of $4,500,000. As of October 15, 2013, the outstanding balance under the Real Estate Term Facility was $3,688,208.57. Also pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Lender provided Debtor with a capital expenditure loan (the **"CapEx Loan"**) on January 12, 2011 in the amount of $500,000. The CapEx Loan was terminated in its entirety and cancelled as part of Fifth Amendment to Forbearance Agreement dated October 14, 2012. There is no balance owing on the CapEx Loan.

12. Forbearance Agreements. As a result of certain defaults under the Pre-Petition Credit Agreement, Debtor and the Pre-Petition Lender entered into a forbearance agreement dated effective as of December 28, 2011, as amended by a First Letter Amendment to Forbearance Agreement dated February 7, 2012, a Second Amendment to Forbearance Agreement dated April 30, 2012, a Third Amendment to Forbearance Agreement dated August 31, 2012, a Fourth Letter Amendment to Forbearance Agreement dated September 28, 2012, a Fifth Amendment to Forbearance Agreement October 14, 2012, a Sixth Amendment to Forbearance Agreement April 30, 2013, a Seventh Amendment to Forbearance Agreement dated May 31, 2013, an Eighth Amendment to Forbearance Agreement dated June 30, 2013, a Ninth Amendment to Forbearance Agreement dated July 31, 2013, a Tenth Amendment to Forbearance Agreement dated August 2, 2013, an Eleventh Amendment to Forbearance Agreement dated

August 31, 2013, and a Twelfth Amendment to Forbearance Agreement dated October 11, 2013, providing in part for the Pre-Petition Lender's agreement to forbear from exercising its rights and remedies under the Loan Documents under the terms and conditions more fully set forth therein (collectively, the **"Forbearance Agreements"**).

Security

13. Pursuant to the Pre-Petition Credit Agreement, Debtor granted to the Pre-Petition Lender to secure the prompt payment and performance of the Obligations (as defined in the Pre-Petition Credit Agreement), a lien on and continuing security interest in the Collateral as defined in the Pre-Petition Credit Agreement. The Collateral consists of all real and personal property of the Debtor. Pursuant to that certain Open-End Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of January 12, 2011 (the "**Pre-Petition Mortgage**"), from Debtor in favor of the Pre-Petition Lender, Debtor has mortgaged to the Pre-Petition Lender all of its respective right, title and interest in and to the Mortgaged Property (as defined in the Pre-Petition Mortgage). The Pre-Petition Mortgage secures the performance of the covenants and agreements contained in the Pre-Petition Mortgage, the Pre-Petition Credit Agreement and the other Loan Documents (as defined in the Pre-Petition Credit Agreement) and secures the payment when due of (i) the obligations of the Borrower under the Pre-Petition Credit Agreement and the Notes (as defined in the Pre-Petition Credit Agreement), together with applicable interest, (ii) all amounts expended or advanced by the Pre-Petition Lender pursuant to any Loan Document and (iii) all unpaid advances made by the Pre-Petition Lender, with respect to the Mortgaged Property, for the payment of taxes, assessments, insurance premiums and all other liabilities and indebtedness owing by Borrower to the Pre-Petition Lender. The liens,

security interests and/or mortgages granted by the Borrowers to the Pre-Petition Lender prior to Petition Date, including, without limitation the liens, security interests and mortgages granted in the Pre-Petition Credit Agreement and the Pre-Petition Mortgage, are referred to herein as the "**Pre-Petition Liens**."

Non-Debtor Guaranties

14. Richard P. Rogel executed and delivered that certain Limited Guaranty Agreement, dated as of December 28, 2011 (as amended, restated, modified or supplemented from time to time, the "**Over-Advance Guaranty Agreement**").

D. Events Leading to the Filing of These Chapter 11 Cases

15. The Debtor has robust capabilities providing precision cast parts to customer specifications. However, the Debtor has confronted several operational and financial challenges that have strained its resources. Over the last five years, profitability and cash flow have deteriorated due to production inefficiencies which caused inflated overtime costs, premium freight charges, containment costs, and yield issues. In addition, indirect costs increased and an ineffective implementation of a new enterprise resource planning (ERP) system made it difficult to manage costing and pricing.

16. Pursuant to its collective bargaining agreement with the Union, the Debtor contributes to the Maintenance Employees Union Local No. 416 Pension Fund, a multiemployer pension plan (the "**MEPP**"). The Debtor's contribution obligations to the Plan are a substantial source of the Debtor's financial stress. Furthermore, the Debtor may lack the ability to withdraw from the MEPP outside of bankruptcy without incurring a substantial withdrawal liability (the "**MEPP Withdrawal Liability**").

17. The Debtor has concluded that a going concern sale of its assets and business is necessary. On August 13, 2013, the Debtor retained Amherst Capital Partners, LLC ("**Amherst**") for the purposes of finding a buyer with the capital to be able to provide the Debtor with a solid financial basis for continuing in business. Amherst was able to find a number of parties potentially interested in acquiring the assets of the Debtor as a going concern. Therefore, the Debtor anticipates filing a motion as expeditiously as possible after the Petition Date, pursuant to section 363 of the Bankruptcy Code, seeking authority to sell substantially all of its assets.

PART II

FIRST DAY PLEADINGS

A. The Case Administration Motions

1. Cash Management Systems

18. The Debtor has filed a motion requesting the authority to maintain its cash management system. Prior the commencement of the cases, in the ordinary course of business, the Debtor maintained a substantially integrated and complicated centralized cash management system (the "**Cash Management System**") consisting of various accounts (collectively, the "**Accounts**").

19. The Debtor has a lock box (the "**Lock Box**") and collections account (the "**Collections Account**") with FirstMerit. The Debtor derives its revenue from customer payments. Customers remit payments via deposits into the Lock Box or, if the payments are hand delivered, the payments are deposited into the Collections Account. As part of the Cash Management System, the Lock Box and the Collections Account are swept daily by FirstMerit.

The swept amounts reduce the obligations owed by the Debtor to FirstMerit.

20. In addition, the Debtor has a controlled disbursement account (the "**Controlled Disbursement Account**") into which FirstMerit deposits certain funds available to the Debtor under the Revolving Facility. All checks for the Debtor, other than payroll checks, are drawn on the Controlled Disbursement Account. The Controlled Disbursement Account is a zero-balance account which is solely funded with the amount of a check once the check is issued by the Debtor. In addition, the Debtor has a separate payroll account (the "**Payroll Account**") at FirstMerit. The Payroll Account is a zero balance account and is funded with the amount of a check once the check is issued by the Debtor. Both the Controlled Disbursement Account and the Payroll Account are funded through a request to FirstMerit under the Revolving Facility.

21. Continuation of the Cash Management System with its complex structure of accounts is essential to maintaining the stability of Debtor's financial structure while operating in Chapter 11. By preserving business continuity and avoiding the operational and administrative paralysis that would accompany the closing of all accounts and the reestablishment of new ones, the relief requested herein is in the best interests of the Debtor's estate and all parties in interest. The Debtor likewise requires continued use of its Cash Management System so that it may continue the operation of its businesses without disruption and unnecessary confusion. This will assist the Debtor in its efforts to maximize the value of its assets.

22. The foregoing practices directly and indirectly help maintain and preserve the value of Debtor's enterprise. Otherwise, the Debtor would not be able to trace its receipts and disbursements or efficiently manage its liquid assets. If the Debtor's Cash Management System is not continued, the Debtor (a) would not be able to timely meet postpetition obligations, (b)

payroll for employees would be disrupted, and (c) Debtor's ability to service its customers would be impeded. Accordingly, maintenance of the existing Cash Management System is not only essential, but is in the best interests of all creditors and parties in interest.

2. Expedited Hearing on the First Day Motions

23. Given the importance of the relief sought in the First Day Motions to the Debtor's ability to continue its business operations, the Debtor requested an entry of an order scheduling an expedited hearing on the First Day Pleadings.

24. The Case Administration Motions have been filed in order to allow the Debtor to transition into its role as debtor in possession in the least disruptive manner and to administer the estates in a streamlined and efficient manner. These processes will conserve the resources of the estates and allow the Debtor to concentrate on its reorganization efforts.

B. Prepetition Claims Motions

1. Employee Wages and Benefits

25. The Debtor has filed a motion seeking to pay certain prepetition employee claims. The Debtor's workforce currently includes approximately 211 full-time and part-time hourly and salaried employees (each an "Employee" and collectively, the "Employees").

26. Any delay or disruption in the provision of employee benefits or the payment of compensation will imperil the Debtor's relationship with the Employees and irreparably impair workforce morale at the very time when the dedication, confidence and cooperation of the Employees are most critical. At this critical stage, the Debtor simply cannot risk the substantial disruption of business operations that would inevitably result from any decline in workforce morale attributable to the Debtor's failure to make prepetition

compensation payments in the ordinary course of business.

27. Accordingly, the Debtor requests the entry of an order authorizing in accordance with its stated policies (as such polices may be modified from time to time) and in the Debtor's sole discretion, to pay: (a) certain prepetition wages, salaries, overtime pay, incentive pay, contractual compensation, sick pay, vacation pay, holiday pay and other accrued compensation (collectively, the "Prepetition Compensation") to Employees; (b) prepetition business expenses, including travel, lodging, and other reimbursable business expenses (collectively, the "Prepetition Business Expenses") to Employees (c) prepetition contributions to, and benefits under, the Employees' benefit plans; (d) prepetition payroll deductions and withholdings with respect to Employees; and (e) all costs and expenses incident to the foregoing payments and contributions (including payroll-related taxes and processing costs).

28. In the instant case, the Debtor believes that the amount of prepetition wages, salaries and contractual compensation owing to or on account of any particular Employee will not exceed the sum of allowable as a priority claim under section 507(a)(4) or section 507(a)(5) of the Bankruptcy Code.

2. Workers Compensation Claims

29. The Debtor also seeks the entry of an order authorizing the Debtor, in the Debtor's sole discretion, to continue its Workers' Compensation Programs and pay certain prepetition workers' compensation premiums, claims and related expenses.

30. It is critical that the Debtor be permitted to continue the Workers' Compensation Programs and ensure that the Prepetition Workers' Compensation Claims described in the

motion be processed and paid. If the Workers' Compensation Programs are not maintained, the Debtor would be required to make alternative arrangements for workers' compensation coverage because such coverage is required under state law, with severe penalties if an employer fails to comply with such laws. In fact, if workers' compensation coverage is not maintained as required by such laws, without interruption, (a) employees could bring lawsuits for potentially unlimited damages, (b) the Debtor's ongoing business operations could be enjoined and (c) the Debtor's officers could be subject to personal liability. Furthermore, if the Workers' Compensation Programs are not maintained, there is a risk that eligible claimants will not receive timely payments with respect to employment-related injuries. This could have a negative impact on the financial well-being and morale of the Debtor's employees and their willingness to remain as the Debtor's employees, at a time when a significant deterioration in employee morale will have a substantially adverse impact on the Debtor and the value of its assets and business.

3. Prepetition Trust Fund Taxes

31. The Debtor further filed a motion to pay certain prepetition trust fund taxes. The Debtor, in the ordinary course of its business, incurs various tax liabilities, including use taxes and commercial activity taxes (collectively, "**Trust Fund Taxes**"). Prior to the Petition Date, the Debtor paid the Trust Fund Taxes to the appropriate taxing authorities (collectively, the "**Taxing Authorities**") as they became due. [3]

32. Payment of the Trust Fund Taxes in full and on time to the Taxing Authorities is both necessary and in the estate's best interests. Failure to timely pay, or precautionary

[3] As of the Petition Date, the Debtor is appealing an alleged obligation for unpaid use taxes assessed as the result of an audit in the approximate amount of $220,000. The Debtor anticipates continuing this appeal while this bankruptcy case is pending. Accordingly, the Debtor is not seeking authority to pay this prepetition assessment by the trust tax motion.

withholding by Debtor of, payment of the Trust Fund Taxes likely would cause Taxing Authorities to take aggressive actions, such as the filing of multiple liens and a marked increase in audits which would unnecessarily divert the Debtor's attention from the reorganization process. Prompt and regular payment of the Trust Fund Taxes would avoid any such unwarranted governmental action and disruption.

4. Prepetition Lien Claims

33. The Debtor furthers requests the entry of an order authorizing, but not directing, the Debtor, in its sole discretion, to pay prepetition obligations owed (the "**Lien Claims**") to creditors asserting certain statutory or common law liens against property of the Debtor's estate (the "**Lien Claimants**") if the Debtor determines that (a) payment of such claims is necessary to preserve its ability to receive services from such Lien Claimants or access to the tooling in the possession of such Lien Claimants, (b) the uninterrupted continuation of such services and/or access to such tooling is reasonably necessary to maximize the value of the Debtor's estate, and (c) there are sufficient funds available within the budget(s) for the Debtor's use of cash collateral and/or DIP financing, if applicable, to pay a particular Lien Claim.

34. I submit that the relief requested in the motion is necessary and appropriate to carry out the provisions of the Bankruptcy Code. The cost of litigating turnover and adequate protection motions for each item of tooling potentially subject to a statutory or common law lien claim would be an inefficient use of estate resources relative to the benefits received. In addition to the direct costs of proceeding under the normal procedures contemplated by the Bankruptcy Code, the opportunity cost could prove even greater if work stoppages or the unavailability of the Debtor's tooling for regular production operations during the course of such Bankruptcy Code

proceedings impairs the Debtor's ability to fulfill orders and, ultimately, market and sell itself as a going concern. Accordingly, I submit that the value of the estate will be greater if the Debtor is able to pay certain Lien Claims in its sole discretion.

35. The Prepetition Claims Motions have been filed in order to allow the Debtor to transition into its role as debtor in possession in the least disruptive manner and to administer the estates in a streamlined and efficient manner. Paying these claims will allow the Debtor to concentrate on its reorganization efforts and operations in the best interest of the estate and its creditors.

C. Postpetition Debtor in Possession Financing

36. The Debtor further requests the entry of an interim order (A) granting (i) authorization to obtain postpetition financing pursuant to sections 105(a), 361, 362, 364(c), and 364(d) of title 11 of the United States Code (the "**Bankruptcy Code**"), (ii) approval to use cash collateral pursuant to section 363 of the Bankruptcy Code, (iii) security interests and priority liens to the Debtor's postpetition lender (the "**DIP Lender**") pursuant to sections 364(c) and (d) of the Bankruptcy Code, and (iv) authorization to grant adequate protection pursuant to section 361, 363(e), 364(d)(1), 503(b) and 507 of the Bankruptcy Code to the Debtor's prepetition secured lender, and (B) scheduling a final hearing (the "**Final Hearing**") pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

37. The Debtor has attempted to obtain and presently is unable to borrow additional funds on an unsecured basis under any conditions set forth in section 364(a) or (b) of the Bankruptcy Code. Further the Debtor's trade vendors have required the Debtor to pay COD or cash in advance terms. However, as set forth in the financing motion, the DIP Lender has

indicated a willingness to lend money to the Debtor upon the terms and conditions set forth in the DIP Credit Facility, subject to the limitations imposed by the Budget.

38. I submit that the terms and conditions contained in the proposed Interim Order governing the use of Cash Collateral and the DIP Credit Facility, pursuant to which the post-petition loans, advances, and other credit and financial accommodations will be made or provided to the Debtor, have been negotiated in good faith and in an arms' length, open and honest fashion. I represent that the DIP Lender is extending financing to the Debtor in good faith and that the DIP Lender is entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

39. Further, the relief requested by the motion is necessary to avoid immediate and irreparable harm to the Debtor's estate. The Debtor requires money for the operation of its business and administration of its bankruptcy estate, including but not limited to the payment of critical pre-and postpetition wages, salaries, and other expenses, which are essential to the preservation of the estate. The continued operation of Debtor is in the best interests of creditors, the estate and all interested parties because it will preserve going concern values and provide the prospect of greater potential recoveries for creditors than would the immediate termination and liquidation of the Debtor's business.

CONCLUSION

40. In furtherance of its chapter 11 efforts, for the reasons stated herein and in each of the First Day Motions, I respectfully request that the relief sought in the First Day Motions be approved.

FURTHER AFFIANT SAYETH NAUGHT.

Robert Hopkins

SWORN TO and subscribed before me this 16th day of October, 2013.

Notary Public

869333

JO ANN L. SOLNICK
Notary Public, State of Ohio
Recorded in Cuyahoga County
My Comm. Expires May 13, 2016